

D.P.U. 94-142

Investigation by the Department of Public Utilities upon its own motion regarding the revision of the present regulations 220 C.M.R. § 107 governing the procedures to be followed by gas corporations and municipalities subject to G.L. c. 164 relating to the inactivation, abandonment and leakage survey of gas service lines; and the amendment of the present regulation 220 C.M.R. § 69.03 governing the commencement of enforcement proceedings involving violations of safety regulations.

TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	Page 1
II.	<u>DISCUSSION AND ANALYSIS</u>	Page 4
A.	<u>Inactivation and Abandonment of Service Lines</u>	Page 5
1.	<u>Public Safety</u>	Page 5
2.	<u>Extended Inactivation Period</u>	Page 9
3.	<u>Elimination of the Second-Cut Requirement</u>	Page 11
4.	<u>Recommendations and Findings</u>	Page 12
B.	<u>Leakage Surveys</u>	Page 15
C.	<u>Commencement of Enforcement Proceedings</u>	Page 18
III.	<u>ORDER</u>	Page 20

I. INTRODUCTION

On September 2, 1994, the Department of Public Utilities ("Department") issued an Order Commencing Rulemaking and Proposing Regulations, Notice of Public Hearing, and Solicitation of Initial Comments ("Order") with reference to the regulations on the inactivation, abandonment, and leakage survey of gas service lines and the commencement of enforcement proceedings. In the Order, the Department raised issues concerning the practicability of compliance and enforcement of the regulations. Order at 2-11. The Department stated that the purpose of the proposed revisions to 220 C.M.R. § 107 is to make the burdens imposed on service line operators commensurate with any incremental safety to be derived from the enforcement of the regulation. Id. at 2. The purpose of the proposed revision to 220 C.M.R. § 69.03 is to supplement the procedures by which compliance with the regulations is enforced. Id. The Department further stated that the proposed regulations would more cost effectively manage any related risk to public safety. Id. at 14, citing, United States v. Carroll Towing Company, 159 F.2d 169, 173 (1947) (Hand, J.); S. Breyer, Breaking the Vicious Circle: Toward Effective Risk Regulation (1993). As the natural gas industry moves toward increased competition and thus increased efficiency of operations, the Department is mindful of its role to ensure that operating regulations for local distribution companies be economically rational -- though not at a sacrifice or derogation of public safety. This is the import of Justice Breyer's recent lectures and, before that, the concept that underlay Judge Hand's approach to imposing legal liability.

Generally, the proposed regulations, as set forth, extend the period a gas service line

installed after July 31, 1971 may remain inactive before being abandoned.¹ The extension is from five years to ten years. The proposed regulations also alter the procedure service line operators must follow in order to abandon an inactive service line. The proposed regulations would do so by eliminating the present requirement to sever or seal the line exterior to the foundation wall. A service line operator would be required only to make a single cut at the main and seal both ends of that cut in order to abandon a service line. The proposed regulations also revise the requirements of conducting leakage surveys on gas service lines located outside of business districts. Finally, the proposed regulations would allow the Department to issue a warning letter as a supplemental enforcement action. In the Order, the Department noted that a strong evidentiary record, based on actual operating experience and sound engineering judgement, must underpin any decision to proceed from proposed to final regulations. Order at 14. Several successive opportunities for comment were allowed to elicit that record.

The Attorney General of the Commonwealth of Massachusetts ("Attorney General") notified the Department of his intervention in this matter purportedly under the rate-related authority granted him by G.L. c. 12, § 11E. Inasmuch as the instant proceeding is a rulemaking where public comment is solicited and not an adjudicatory proceeding pertaining to rates, persons are not required to intervene in the proceeding. The Attorney General did not file any comments on the proposed regulations.

Pursuant to notice duly issued, the Department accepted initial comments on the proposed regulations from Bay State Gas Company ("Bay State"), Colonial Gas Company ("Colonial"), Fall

¹ For a definition of an "inactive" or "abandoned" service line, refer to the final regulations at 220 C.M.R. § 107.03 in Attachment A to this Order.

River Gas Company ("Fall River"), and the Massachusetts Natural Gas Council ("Gas Council").² Simultaneously with its initial comments, the Gas Council filed a Motion of the Massachusetts Gas Companies to Schedule One or More Technical Sessions and To Bifurcate the Proceeding ("Request").³ In light of the pending Request, initial comments focussed on the Department's proposed regulations governing the inactivation and abandonment of service lines.

On November 29, 1994, a public hearing was held to receive oral comments on the proposed regulations. Testimony was received from John P. Erickson, vice-president of operating and engineering services with the American Gas Association ("AGA"); Kenneth Margossian, president and chief operating officer of Commonwealth Gas Company ("ComGas") and Hopkinton LNG Corporation and chairman of the Gas Council; Thomas Bonner, vice-president, distribution for Boston Gas Company ("Boston Gas"); Paul LaShoto, director of operations and chief engineer for Bay State; Stanley T. Kastanas, manager of regulatory compliance and project engineering for Colonial; and John Dustin, superintendent of technical services at ComGas.

Supplemental written comments ("Supplemental Comments") were received on December 9, 1994 from the John A. Erickson, Bay State, The Berkshire Gas Company ("Berkshire"),

² The Gas Council is composed of investor-owned and municipal natural gas utilities in the Commonwealth of Massachusetts, including Bay State, The Berkshire Gas Company, Boston Gas Company, Colonial, Commonwealth Gas Company, Essex County Gas Company, Fall River, Fitchburg Gas and Electric Company, North Attleboro Gas Company, the Town of Middleboro Gas and Electric Department, Wakefield Municipal Light Department, the Town of Westfield Gas and Electric Light Department, and the City of Holyoke Gas and Electric Light Department.

³ The instant is a rulemaking and not an adjudicatory proceeding. Therefore, the Department will treat what the Companies have labelled a "motion" as a comment or request and will respond to it as such. The Department will address the Companies' Request in Section II.B., below.

Boston Gas, Colonial, ComGas, Essex County Gas Company ("Essex"), the Gas Council, and North Attleboro Gas Company ("North Attleboro").

Upon request of certain commenters, the Department accepted further comments ("Final Comments") on the proposed regulations governing leakage surveys on February 10, 1995. Such comments were received from Bay State, Berkshire, Boston Gas, Colonial,⁴ ComGas, Essex, and the Gas Council.

II. DISCUSSION AND ANALYSIS

Generally, the commenters supported, with only minor recommended modifications, the Department's proposed regulations governing the inactivation and abandonment of gas service lines and the enforcement procedures (Bay State Initial Comments at 2; Colonial Initial Comments at 6; Fall River Initial Comments at 1; Gas Council Initial Comments at 4). They also supported the Department's effort to reassess the regulations by comparing the costs of compliance with the incremental benefit to public safety (Bay State Initial Comments at 2; Colonial Initial Comments at 6; Fall River Initial Comments at 1; Gas Council Initial Comments at 4). However, the Department received many comments regarding the need for a more in-depth and technical analysis of the requirements for leakage surveys (Bay State Final Comments at 2; Berkshire Final Comments at 2; ComGas Final Comments at 2-3; Essex Final Comments at 1; Gas Council Final Comments at 1). The commenters provided the Department with information regarding the engineering and business realities faced by the service line operators in support of the proposed regulations and the recommended modifications. In the following sections, the Department addresses the issues raised by the commenters.

⁴ The Department accepted Colonial's final comments on February 17, 1995.

A. Inactivation and Abandonment of Service Lines

In the Order, with regard to the inactivation and abandonment of service lines, the Department suggested that the additional cost of compliance with the present regulations does not enhance safety significantly. Order at 2. The Department noted that the regulation, in its present form, may pose an unwarranted economic burden on service line operators by requiring them, in many instances, to discard relatively new and possibly still useful gas service lines after a five-year inactive period. Id. The Department further noted that service line operators may also be forced to incur an unnecessary costs in attempting to comply with 220 C.M.R. § 107.03, which, in light of certain requirements of the federal regulations, requires a probably redundant severance at the customer end of the service line. Id. at 2, citing 49 C.F.R. § 192.727(b). The comments received by the Department support the Department's propositions.

1. Public Safety

With regard to the public safety issue, Mr. Erickson, whose primary responsibility with the AGA is to monitor pipeline-safety regulations, testified that, in his professional judgement, the proposed regulations governing abandonment of service lines would not compromise public safety in that the proposed abandonment procedures are consistent with the federal regulations (Tr. at 17). Mr. Erickson provided the Department with data on over 1700 distribution incidents⁵ that have occurred in the United States since 1984. He stated that after review of these data, he could not find one instance where a service line properly abandoned under federal procedures was identified as the cause of a reportable incident (Tr. at 17). Based on his review of these data, he

⁵ An incident is an event that involves a release of gas from a pipeline and death, personal injury, or property loss exceeding \$50,000. 49 C.F.R. § 191.3. All such incidents must be reported to the United States Department of Transportation. 49 C.F.R. § 191.9.

further testified that he was not aware of any time where a plastic or cathodically protected service line, that had been reactivated in accordance with the federal pipeline safety regulations, was involved in a reportable incident (Tr. at 19-20). Mr. Erickson testified further that in his experience, he has never heard of an incident, reportable or nonreportable, where a properly abandoned service caused an incident (Tr. at 21).

The Department's propositions regarding public safety are further supported by the comments of service line operators. The Gas Council submitted that the single-cut procedure for abandonment required by the federal regulations is sufficient for public safety as its members are not aware that this abandonment procedure has contributed to any incident (Gas Council Initial Comments at 6). Several commenters stated that they had employed a single-cut approach to abandonment, the approach proposed by the Department, prior to August 8, 1985, the date 220 C.M.R. § 107.03 was implemented and were not aware of an instance where public safety was endangered by such a procedure (Tr. at 47; Bay State Initial Comments at 3; Berkshire Supplemental Comments at 1-2; Colonial Initial Comments at 3; North Attleboro Supplemental Comments at 1). From 1976 to 1985, Boston Gas abandoned 16,620 service lines by the single-cut method and experienced no incidents arising out of that procedure (Tr. at 47; Boston Gas Supplemental Comments at 4).⁶ Mr. Bonner testified that, based on his experience, a single cut at the main is sufficient to thwart the flow of gas to the building (Tr. at 47). Colonial also stated that a single cut, sealed at both open ends exposed by the cut, at the main is sufficient to eliminate

⁶ In preparing its comments, Boston Gas reviewed the records maintained by Boston Gas on incident reports filed with both the United States Department of Transportation and the Department (Boston Gas Supplemental Comments at 4). Boston Gas also questioned a number of experienced operating staff, whose primary concern is safety, to ascertain whether any non-reportable incidents occurred before 1985 (*id.*).

any chance of migrating gas (Colonial Initial Comments at 3). Colonial commented that of the 3000 service lines abandoned by the single-cut approach prior to 1985, it has not experienced a single incident involving property damage or injury that could have been avoided by a second cut (id. at 3).⁷ Since 1985, Bay State has abandoned 8,800 services and has found no evidence that the additional expense of making a second cut at the foundation has improved safety (Bay State Initial Comments at 3; See also ComGas Supplemental Comments at 4).⁸ Further, Bay State compared the operations of its subsidiary in Maine, Northern Utilities, which has abandoned approximately 13,000 service lines since 1973 under the provisions of the federal regulations allowing one cut at the main (Tr. at 56). Bay State commented that it acquired Northern Utilities in 1979 and since that time has not experienced any problems with public safety arising from an inactive service line which was abandoned with one cut at the main (id.).

The commenters also stated that extending the period during which certain service lines may remain inactive prior to abandonment will not compromise public safety (Gas Council Initial

⁷ Colonial stated that in preparing its comments submitted November 29, 1994, it reviewed Incident Reports submitted for the period 1971 to date, Operator's Reports for the period 1955 through 1985, service records for all odor calls for the period January 1, 1992 to date, time records, leakage records for the period 1978 through 1986, Abandoned Service Records for the period 1985 to date, other relevant records kept in the usual course of business and consulted with several long-term employees (Colonial Supplemental Comments at 1-2).

⁸ Bay State's witness, Paul LaShoto, an employee of 23 years experience in engineering, based his assertions on his own personal recollection, supported by direct questioning of longtime employees of the company's distribution departments in Brockton, Lawrence, Springfield, as well as in Maine and New Hampshire (Bay State Initial Comments at 1; Bay State Supplemental Comments at 1). Bay State commented that records do not exist in a form which would provide the Department with documentary support for the proposed regulations and accordingly offered testimonial evidence (Bay State Supplemental Comments at 1).

Comments at 6). The Gas Council explained that plastic pipe and metallic pipe cathodically protected are proper candidates for extended inactivity because they do not corrode and, therefore, poses no risk to public safety (Gas Council Initial Comments at 7). Colonial stated that inactive service lines are subject to monitoring and thus pose no greater risk to public safety than active service lines (Colonial Initial Comments at 4; See also Berkshire Supplemental Comments at 2).

In addition, several commenters suggested that, if implemented, the proposed regulations governing the inactivation and abandonment of service lines would actually enhance public safety by allowing service line operators to allocate the resources saved from complying with certain unnecessary requirements to more effective uses such as system maintenance and improvements and improved leak response time (Tr. at 48; Gas Council Initial Comments at 7). The Department will expect that the industry, as it testified through its trade organization, the Gas Council, to make good on this adoptive representation.

2. Extended Inactivation Period

Several commenters provided the Department with information to support the Department's proposition that the regulation, in its present form, may pose an unwarranted economic burden on service line operators by requiring them, in many instances, to discard relatively new and possibly still useful gas service lines after a five-year inactivation period. According to Bay State, extending the inactivation period from five to ten years will allow more services to be reactivated, thus improving asset utilization and decreasing company costs (Bay State Initial Comments at 4; See also, Colonial Initial Comments at 5). The Department received comments which indicate that costs to customers would decrease under the proposed regulation

because of reduced reactivation costs (Colonial Initial Comments at 5).

More specifically, Essex commented that since 1985, it has abandoned and reactivated approximately 15 plastic or cathodically protected steel services which would have come within the proposed ten-year extension and would have saved the Company "thousands of dollars" (Essex Supplemental Comments at 1). Berkshire notes that in its service territory there has been a significant migration of population out of its service territory, resulting in increased inactive services (Berkshire Supplemental Comments at 2). Berkshire submits that the additional inactivation period allowed by the proposed regulations would allow further marketing efforts to utilize the service line asset by returning it to active use, saving the Company the costs of abandonment (Berkshire Supplemental Comments at 2). Boston Gas provided the Department with data to suggest that the company would save \$1,209,733 per year if the inactivation period were extended from five to ten years (Boston Gas Supplemental Comments, Attachment 3).

Colonial commented that approximately \$250,000 could have been saved had it been permitted to abandon service lines over a period of 10 years rather than five years (Colonial Supplemental Comments at 2). Colonial based this conclusion on its estimate that 500 services abandoned since 1985 could have remained active had the inactivation period been extended (id.). Based on estimations from its marketing department, Colonial states that approximately 50 percent of the 500 abandoned services could have been reactivated had the inactivation period been extended to 10 years, saving Colonial's customers approximately \$300,000 (id. at 4).⁹ Colonial submitted that if the proposed regulations are enacted, the Company will not be required

⁹ Colonial estimates the cost to install a new service line to be \$1,200 (Colonial Supplemental Comments at 4).

to abandon approximately 1,000 services, at an additional savings of \$500,000 (id.).¹⁰

ComGas commented that of 1,144 inactive services that were abandoned since 1985, 13.8 percent, or 158, were reactivated during the following nine-year period (ComGas Supplemental Comments at 7). ComGas estimated that if the period for inactivation is extended, it would save approximately \$85,000 per year (id. at 10-11).¹¹

3. Elimination of the Second-Cut Requirement

The Gas Council submits that savings of \$2.6 million would be realized over the next five years if the proposed changes to the abandoned services regulations are promulgated (Gas Council Supplemental Comments at 1). The comments received indicate that the cost savings result from costs associated with the actual abandonment, as well as the time and resources wasted from an inability to gain access to a person's property in order to make the second cut at the foundation wall (Bay State Initial Comments at 3; Fall River Initial Comments at 1). Various service line operators provided the Department with estimates of their individual cost savings.

Essex estimated that the requirement for the second cut since 1985 has cost the company approximately \$42,000 with no measurable increase in safety (Essex Supplemental Comments at 1). According to Berkshire, it could have saved, since 1985, approximately \$450,000, or \$125

¹⁰ Colonial estimates that it costs approximately \$500 per service to abandon a service line under the existing regulations (Colonial Supplemental Comments at 3).

¹¹ ComGas explained that 56 percent of its services that would be abandoned under the existing regulations are plastic or cathodically protected and, therefore, would qualify for the extension under the proposed regulations (ComGas Supplemental Comments at 10). ComGas assumes that 25 percent, or 42, of these services would be reactivated at an average cost of \$1,200 per service (id.). Thus, the company would save \$50,000 per year ($300 \times 0.56 \times 0.25 \times 1200$) in reactivation costs (id.). ComGas estimated that it would also save \$838 per service in abandonment costs, or \$35,000 ($\838×42 services) (id.).

per service line, had a second cut at the main not been required (Berkshire Supplemental Comments at 2). Boston Gas estimated that it would have saved a total of \$2,966,673, or \$140 per service, had the second-cut not been required (Boston Gas Supplemental Comments at 3). Bay State estimates that the cost to abandon a service is \$400 and that by eliminating the second-cut requirement, the cost would be reduced by 20 percent (Bay State Supplemental Comments at 2).

Colonial estimates that approximately \$600,000 could have been saved since 1985 by eliminating a second cut of a service line at the foundation (Colonial Supplemental Comments at 2). Colonial submitted that the average cost saved per abandoned service would be \$167 (id.). Colonial further commented that approximately 50 percent of all initial attempts to gain access to a customer's home for the purposes of abandoning an inactive service line are unsuccessful (id. at 3). Colonial estimates that it could save an additional \$45,000 lost due to the inability to gain access had only a single cut at the main been required (id.).¹²

ComGas also commented that it would experience cost savings if a second cut at the foundation were not required (ComGas Supplemental Comments at 5, 6, 8). ComGas estimated that, by eliminating the second-cut requirement, the time to abandon a service would be reduced by 40 to 50 minutes, which equates to a savings of approximately \$198 per service (id. at 8). ComGas further estimated that it would have saved \$1,229,000 since 1985 had only one cut been required (id.). ComGas stated that if the proposed regulations were implemented, it would not be required to abandon approximately 300 services per year, saving the company \$58,000 per year

¹² Colonial based this estimation of a conservative assumption that an unsuccessful attempt to gain access costs Colonial's customers approximately \$25 for truck time, direct labor, and overhead (Colonial Supplemental Comments at 3).

(id. at 9). ComGas also commented on the difficulty of contacting a non-customer, who has no incentive to cooperate, to gain access to the property in order to abandon a service (id. at 6).

ComGas highlighted such problems as (1) unknown names and phone numbers; (2) hostile confrontations; and (3) misbeliefs of property owners that the inside piping is theirs and that it will add value to their property (id.; See also, Bay State Initial Comments at 3).

4. Recommendations and Findings

The record contains sufficient evidence, based on actual operating and engineering experience, to support a Department decision to proceed from proposed to final regulations governing the inactivation and abandonment of service lines. The Department finds that such regulations will ease the economic burden placed on service line operators without compromising public safety. Moreover, the Department finds that these regulations will be conducive to more competitive pricing of natural gas for consumers.

The Gas Council has recommended minor clarifications to the language of the proposed regulations regarding the applicability of the regulations at 220 C.M.R. § 107.05(1) and the definitions of the time periods for inactivation of service lines at 220 C.M.R. § 107.05(3). The Department finds the Gas Council's recommended language clarifies that certain inactive pipelines, because of either their location or condition poses an additional risk to public safety, should be abandoned promptly, regardless of when the service line became inactive. Therefore, the final regulations specify that the regulations requiring prompt abandonment govern wherever they apply, regardless of the activation or inactivation date. Further, the final regulations provide that a service line, which was installed after July 31, 1971 and which becomes inactive after August 8, 1985, shall be abandoned not later than ten years after the most recent inactivation date.

The Gas Council, as well as individual service line operators, expressed concern that some of the pipe installed prior to July 31, 1971 is either plastic or cathodically protected,¹³ yet would not qualify for the extended inactivation period under the proposed regulations (Gas Council Initial Comments at 8; Bay State Initial Comments at 4; Colonial Gas Initial Comments at 5). The commenters recommended that the extended inactivation period be based upon material type rather than installation date (Bay State Supplemental Comments at 2; Boston Gas Supplemental Comments at 2; ComGas Supplemental Comments at 11). In response to a Department request, several service line operators provided the Department with an estimate of 103,775 as the number of pre-1971 services in their service territory which are either cathodically protected or plastic (See Bay State Supplemental Comments at 2; Boston Gas Supplemental Comments at 2; ComGas Supplemental Comments at 11; Colonial Supplemental Comments at 3).¹⁴

The Gas Council proposes an additional clause be inserted at 220 C.M.R. § 107.05(3) that will allow an operator to establish that a service line installed before July 31, 1971 nevertheless meets the federal code requirements for pipe installed after that date (Gas Council Initial Comments at 8). As stated above, the Department, in proposing the regulations, considered whether the economic burden on service line operators by requiring them, in many instances, to discard possibly still useful gas service lines after a five-year inactivation period was warranted by

¹³ The pipe is either cathodically protected at installation or retro-fitted.

¹⁴ Bay State has 20,938 pre-July 31, 1971 protected services; Boston Gas has 73,264 pre-July 31, 1971 cathodically protected services and only a few plastic services; ComGas has 3,013 pre-July 31, 1971 cathodically protected steel services since 1971; Colonial has approximately 6,560 pre-July 31, 1971 cathodically protected steel services no plastic services (Bay State Supplemental comments at 2; Boston Gas Supplemental Comments at 2; ComGas Supplemental Comments at 11; Colonial Supplemental Comments at 3).

any commensurate contribution to public safety. The Department selected the July 31, 1971 date as the demarcation between those services which would qualify for an extended inactivation period to coordinate with the effective date of the federal regulations requiring cathodic protection. See, 49 C.F.R. § 192.455. The Department's intent was to ease the economic burden placed on service line operators while maintaining a level of safety by allowing an extended inactivation period for plastic or cathodically protected inactive services, which are not subject to corrosion and, thus, pose no risk to the public safety. The Department agrees with the commenters that it is more appropriate to address the issue as one of adequate cathodic protection, rather than a specific installation date. Moreover, it appears that the service line operators maintain adequate records that easily identify such pre-July 31, 1971 pipe. Therefore, in the final regulations, the Department includes a provision in 220 C.M.R. § 107.05(3) that will allow service line operators to qualify for the extended inactivation period by establishing that a pre-July 31, 1971 service line due for abandonment is plastic or, in the alternative, is cathodically protected in accordance with 49 C.F.R. §§ 192.463 and 192.455(a)(1) and (2).

B. Leakage Surveys

In support of its Request to bifurcate the rulemaking, the Gas Council filed a memorandum stating that the complexity of the legal and technical issues related to both the existing and proposed regulations governing leakage surveys of service lines cannot be adequately addressed initially in a formal public hearing (Memorandum at 2). The Gas Council, therefore, recommended that the Department bifurcate this rulemaking and schedule technical sessions for the purpose of informally discussing the legal and technical issues raised by the proposed regulations governing leakage surveys (id.). The Gas Council's initial comments were otherwise

reticent on the subject of leakage survey (Tr. at 12-13).

In the comments the Department received regarding the proposed regulations of leakage surveys, most reiterated the Gas Council's position that in-depth, informal discussions of the companies operating experiences are warranted in order to formulate a comprehensive approach to leakage survey requirements (Bay State Final Comments at 2; Berkshire Final Comments at 2; Essex Final Comments at 1; Gas Council Final Comments at 1; ComGas Final Comments at 2-3). Berkshire, ComGas and the Gas Council suggested that, during technical sessions, operational and maintenance experiences could be discussed (Berkshire Final Comments at 1; ComGas Final Comments at 2; Gas Council Final Comments at 1). ComGas also suggested that during technical sessions, it could discuss current issues and operational solutions as the value of flame ionization gas detection equipment, the introduction of new technology, and alternative checks that ensure public safety (ComGas Final Comments at 2).

The commenters expressed a need for clarity in the regulations governing leakage surveys in order to frame their day-to-day system operating plans (Boston Gas Final Comments at 1; ComGas Final Comments at 2). A number of commenters stated that it is inappropriate to have leakage surveys addressed in both 220 C.M.R. § 101.06(21), entitled "Distribution Systems Leakage Surveys and Procedures," and in 220 C.M.R. § 107.07, entitled "Leakage Survey of All Service Lines" (Bay State Final Comments at 1; Berkshire Final Comments at 1; Boston Gas Final Comments at 2; Essex Final Comments at 1; Gas Council Final Comments at 1). Bay State contends that the respective headings do not accurately describe the applicability of the regulation (Bay State Final Comments at 1). Bay State further contends that additional confusion is caused by the partial overlap in the different treatments by each section for various classifications of gas

distribution piping (id.). Berkshire explained that coordination will facilitate understanding and compliance (Berkshire Final Comments at 1). ComGas suggests that confusion, unintended non-compliance and wasted resources may occur with the continued separation of the leakage survey requirements (ComGas Final Comments at 2).

The commenters also contend that the proposed regulations governing leakage surveys may cause confusion among operators given that some requirements appear more or less stringent than the federal pipeline safety regulations promulgated by the United States Department of Transportation ("DOT") within 49 C.F.R. 192.723. The commenters correctly note that if the Department were to promulgate requirements different than those promulgated by DOT, the Department's requirements must be more stringent than the DOT requirements. See, Commonwealth v. Vitello, 367 Mass. 224, 247 (1975). Bay State, Essex and the Gas Council suggest that the DOT regulations, 49 C.F.R. 192.723 (b), contain mandatory leakage survey requirements for gas distribution system operators, sufficient to assure the safety of the general public (Bay State Final Comments at 1; Essex Final Comments at 1, Gas Council Final Comments at 1). ComGas suggests that the Massachusetts regulations on leakage surveys should be consolidated in one section and mirror the federal regulations to avoid confusion and potential challenges by DOT (ComGas Final Comments at 2).

In proposing the regulations governing leakage surveys, the Department intended to offer a practical resolution to operators confronted with the impracticalities of complying with the current regulations.¹⁵ Apparently, the proposal was not received in this light; but no other practical alternatives were offered. Nevertheless, the comments raised interesting issues that

¹⁵ See, Order at 13.

warrant a second look at the proposed leakage survey regulations. This was the response that the Department sought to elicit, if the proposal the Department advanced, in fact, raised practical problems in its implementation (Tr. at 32). Therefore, the Department will reserve, for now, judgment on the regulations governing leakage surveys. The Department authorizes the Director of the Pipeline Engineering and Safety Division ("Director"), if he deems it useful, to assemble a limited consultative panel or working group of his own choosing from persons knowledgeable in gas distribution safety and U.S. DOT regulations to explore these and other issues regarding leakage surveys. The Director is authorized to conduct informal discussions with the panel. In any event, the Director is instructed to report any findings he might make to the Department within 90 days of this Order. Accordingly, the existing regulations governing leakage surveys will remain in effect and unchanged by the final regulations effected by this Order, pending the Director's report.

C. Commencement of Enforcement Proceedings

The Department proposed regulations provide that an enforcement proceeding may be commenced with the issuance of a warning letter, or a notice of probable violation ("NOPV"). The issuance of a warning letter as an enforcement action would be at the Department's and thus the Director's discretion depending on the nature of the violation. The commenters expressed support for the Department's proposed regulations supplementing the Department's enforcement actions, with one recommended modification (Tr. at 56; Gas Council Initial Comments at 3, 9; Colonial Initial Comments at 2-3; Bay State Initial Comments at 5). Colonial commented that warning letters and NOPVs are intended to accomplish the same result, i.e., assure the public and the Department of compliance with safety regulations (Colonial Initial Comments at 2). Colonial

further commented that, since the NOPV process is more formal, and perhaps adversarial, the cost of such a process can be significant (id.). Colonial suggests that a warning letter will provide the companies with sufficient incentive to initiate reasonably necessary steps to assure compliance with the applicable regulations without the burden of the costs associated with the NOPV process (id.).

Several commenters recommend that the Department clarify the effect of the Department's warning letter (Bay State Initial comments at 5; Colonial Initial Comments at 2; Gas Council Initial Comments at 9). The commenters recommend language that provides that no such warning letter will be deemed to be based on a finding or adjudication by the Department that a violation exists, nor will it constitute evidence that a violation exists (Bay State Initial Comments at 5; Colonial Initial Comments at 2; Gas Council Initial Comments at 9). The commenters expressed concern that such a clarification will preclude the use of warning letters as evidence of fault in a civil action (Bay State Initial Comments at 5; Colonial Initial Comments at 2; Gas Council Initial Comments at 9).

The Department's proposed regulations provided that a warning letter could, as a matter of enforcement discretion, be used to commence an enforcement proceeding in order to ensure compliance with the applicable safety regulations in a less formal and costly manner. In the alternative and as a matter of discretion, the proposed regulations further provided that the Department may proceed immediately to an NOPV, bypassing the warning letter altogether and without notice of intent to bypass. The final regulation preserves and effects this distinction and provides the associated enforcement discretion. As with the NOPV, the Department did not intend that the issuance of a warning letter should be construed as evidence of an actual violation

of a safety regulation. Therefore, the Department finds that the suggested modification of the proposed regulation, i.e., to indicate a warning letter will not be deemed as evidence of an actual violation, is reasonable. Accordingly, the final regulations include language proposed by the Gas Council.

III. ORDER

Accordingly, after due notice, public hearing, and consideration, it is

DETERMINED: that the regulations attached hereto, and designated as 220 C.M.R. s. 107.00 et seq. and 220 C.M.R. s. 69.03 are reasonably necessary for the administration of Chapter 164 of the General Laws; and it is

ORDERED: that the regulations entitled "Abandonment of Gas Service Lines and Leakage Survey Procedures" and "Commencement of Enforcement Proceedings" attached hereto are hereby ADOPTED; and it is

FURTHER ORDERED: that these regulations shall take effect upon publication in the Massachusetts Register.

By Order of the Department,

Kenneth Gordon, Chairman

Mary Clark Webster, Commissioner

ATTACHMENT A

220 CMR 107.00 ABANDONMENT OF GAS SERVICE LINES AND LEAKAGE
SURVEY PROCEDURES

Section

107.01 Applicability

107.02 Application for Exceptions from Provisions of 220 CMR 107.00

107.03 Definitions

107.04 Procedures for Abandonment of Service Lines

107.05 Abandonment of Service Lines

107.06 Records and Reports For Inactive and Abandoned Service Lines

107.07 Leakage Survey For All Service Lines

107.01: Applicability

Notwithstanding any other provisions of regulations, 220 CMR 107.00 applies to any person engaged in the storage, transportation or distribution of gas and is not limited to gas corporations, gas companies or municipal gas departments.

107.02: Application for Exceptions from Provisions of 220 CMR 107.00

Any person engaged in the operation of a service line may make a written request to the Department for an exception to the provision of these regulations. The request shall justify why the exception should be granted and shall demonstrate why the exception sought does not derogate from the safety objective of 220 CMR 107.00.

The Department may deny the exception or grant the exception as requested, or as modified by the Department and subject to conditions. Any exception shall be issued in writing and may be made by the Director of the Pipeline Engineering and Safety Division. Any such person aggrieved by a decision of the Director regarding a request for an exception may appeal the Director's decision to the Commission. Any appeal shall be in writing and shall be made not later than ten business days following issuance of the written decision of the Director.

107.03: Definitions

As used in 220 CMR 107.00:

Abandoned means that:

- (1) The service line is disconnected or cut off at or as close as practical to the main; and
- (2) Any opening in the main or the open end of the segment of the service line left thereto is sealed; and
- (3) The service line is purged of gas, except when the volume of gas is so small that there is no potential hazard; and
- (4) The open end of the disconnected service line near the main and traversing to the premises is sealed.

Department means the Massachusetts Department of Public Utilities.

Distribution line means a gas pipeline, other than a gas-gathering or transmission line, that is normally used by utilities for the transportation of natural gas and/or other flammable gas to customers.

Inactive service line means a service line where gas service to the customer has been discontinued but the service line has not been abandoned.

Main means a distribution line that serves as a common source of supply for more than one service line.

Operator means a person who engages in the transportation of gas.

Person means any individual, firm, joint venture, partnership, corporation, association, state agency, municipality, municipal department, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

Pipe means any pipe or tubing used in the transportation of gas, including pipe-type holders.

Pipeline means all parts of those physical facilities through which gas moves in transportation including pipe valves and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies.

Purge means the act of removing flammable gas from a distribution line and replacing it with a noncombustible gas.

Service line means a distribution line that transports gas from a common source of supply to (a) a customer meter or the connection to a customer's piping, whichever is further downstream, or (b) the connection to a customer's piping if there is no meter.

107.04: Procedures for Abandonment of Service Lines

Each operator shall prepare and follow written procedures for the inactivation and abandonment of service lines. The procedures shall be included in the operator's procedural manual pursuant to 49 CFR 192.605.

107.05: Abandonment of Service Lines

(1) Notwithstanding any provision of 220 CMR 107.05(2),(3), or (4), inactive service lines which shall be abandoned promptly, with due consideration to public safety, are those:

- (a) located in, or close to, excavations; or
- (b) located in, or close to, buildings being demolished; or
- (c) discovered to be leaking gas; or
- (d) unrecorded or previously unknown lines discovered in the course of leakage surveys, construction, maintenance or inspection of pipeline facilities.

(2) All service lines inactivated on or before August 8, 1985, and not later reactivated, shall be abandoned on or before August 8, 1995.

(3) A service line which was installed on or before July 31, 1971, and which becomes inactive after August 8, 1985, shall be abandoned not later than five years after the most recent inactivation date, provided, however, that if the operator can demonstrate that such service line is plastic or, in the alternative, is cathodically protected in accordance with 49 CFR 192.463 and 49 CFR 192.455(a)(1) and (2), then such service line shall be abandoned in accordance with 220 CMR 107.05(4).

(4) A service line which was installed after July 31, 1971, and which becomes inactive after August 8, 1985, shall be abandoned not later than ten years after the most recent inactivation date.

107.06: Records and Reports For Inactive and Abandoned Service Lines

(1) Readily accessible records of inactive service lines shall be maintained by the operator. Such records shall include the service line's location, the date the service line was installed,

and the date the service line became inactive. If any information is unavailable to or unobtainable by the operator, it shall be listed on the record as "unknown."

(2) Readily accessible records of the location of any service line that is abandoned after August 8, 1985 shall be maintained by the operator for at least five years after the date of abandonment or for such longer time as the operator deems appropriate.

(3) Not later than March 15th of each year, each operator shall submit to the Department an annual report indicating the total number of inactive service lines in its distribution system on December 31st of the preceding calendar year, and the number of inactive service lines abandoned during the preceding year.

107.07: Leakage Survey of All Service Lines

(1) Leakage surveys, using a gas detector system, such as flame ionization equipment or equivalent devices, must be made over all active and identified inactive service lines outside of business districts, as defined by 220 CMR 101.06(21)(a), as frequently as necessary but at intervals not exceeding five (5) years. The surveys shall cover at least twenty percent (20%) of the service lines each year and shall begin no later than during calendar year 1986. Persons participating in leakage surveys shall be trained to recognize the possible existence of locations of unknown or unidentified leaking inactive service lines that may be found during survey analysis. If any part of 220 CMR 107.07(1), conflicts with Department regulations contained in 220 CMR 101.04, 220 CMR 107.07(1) shall be controlling.

(2) [Reserved]

REGULATORY AUTHORITY

220 CMR 107.00: M.G.L. c. 164, s. 76C.

220 CMR 69.03: Commencement of Enforcement Proceedings

(1) Warning Letters

Upon determining that a probable violation of 220 CMR 101-113 or any provision of any other code or regulation or rule pertaining to the safety of pipeline facilities and the transportation of gas has occurred or is occurring, the Department may issue a warning letter notifying the owner or operator of the probable violation and advising the operator to correct it or be subject to enforcement action under 220 CMR 69.03(b) through 69.09. No such warning letter will be deemed to be based on a finding or adjudication by the Department that a violation exists, nor will it constitute evidence that a violation exists.

(2) Notice of Probable Violation

The Department may begin an enforcement proceeding by issuing a notice of probable violation ("NOPV") if the Department has reason to believe that a violation of 220 CMR 101-113 or any provision of any other code or regulation or rule pertaining to the safety of pipeline facilities and the transportation of gas has occurred or is occurring. The NOPV may be issued by the Commission or its designee. The NOPV shall state the provision(s) of the codes, regulations or rules which the respondent is alleged to have violated and the evidence upon which the allegations are based, shall give notice of response options available to the respondent under 220 CMR 69.04, and, if a civil penalty is proposed, shall state the amount of the proposed civil penalty and the maximum civil penalty for which the respondent may be liable under law.

REGULATORY AUTHORITY

220 CMR 69.00: M.G.L. c. 164, ss. 76C and 105A.